

Donald Phillips

From: Donald Phillips
Sent: Wednesday, October 23, 2019 6:16 AM
To: 'Peter Romary'
Cc: Donald Phillips
Subject: Petition and Consent Order
Attachments: Interim ECU Chancellor Dan Gerlach Investigation--PRLR for Custodial LEA Recording(s); Petition for Release ZTA.pdf; Petition and Notice of Hearing.pdf; McCarthy--Petition.pdf

Peter:

I was in Superior Court all day on Monday and have been slammed with other matters. I do apologize for not getting back in touch with you. I recommend that you work on filing your Petition. Please find a copy of the AOC-CV-270 form in the above-attached email (from 10/15/19) and a copy of a few Petitions filed by other attorneys, which you may want to use as a go-by. As a reminder, you would be filing a N.C.G.S. § 132-1.4A(g) Petition.

Once you have your Petition drafted, please feel free to email same to me BEFORE you file it so that I can review it and we can make sure we are on the same page regarding logistics.

My direct line is (252) 329-4331.

Thank you.
Donald

Donald K. Phillips
Assistant City Attorney
P.O. Box 7207
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From: Peter Romary <peter.romary@qverity.com>
Sent: Tuesday, October 22, 2019 8:25 PM
To: Donald Phillips <DKPhillips@greenvillenc.gov>
Subject: Re: Petition and Consent Order

Hi, Donald:

I'm not sure if Rep. Bell (Majority Leader) was able to get up with you today -- he is wanting to see the video when I get it. I understand that Dr. Roper is making a decision this week and it is highly likely that he will be

adopting the story of Mr. Gerlach that corrupt GPD officers set him up on orders from a "cabal" of Judges, Lawyers, BoT, BoG Members along with political adversaries from Mr. Gerlach's days with Governor Easley -- this was what national and state PBA and FoP were trying to avoid because the original story made national and international press.

I have conveyed through to the Speaker; President Pro Tem and Majority leader that there is only one video currently being sought (others could be obtained at other times), witnesses state that no LEOs were present and that I have offered to draft up the order or the piece describing what would be needed.

I do not know how long Judge Cole will be there this week and / or if Marvin is back. The verbiage would be:

FINDINGS OF FACT:

All parties are properly before the Court and all persons or institutions required by law to be served with notice have been served and no objections have been raised. Further the Court has subject matter jurisdiction over this matter,

The petitioner, Peter Romary, Attorney-at-Law, and Greenville Police Department by and through their attorney, Donald Phillips hereby stipulate and agree to the release of copies of footage from video surveillance to the petitioner of the area in front of 212 E. 5th Street, Greenville NC between the times of 0210 and 0230 in the early morning hours of Thursday 26th of September, 2019, showing a man believed to be Mr. Dan Gerlach coming into the picture displayed on the video, preparing to enter a vehicle, entering a vehicle and driving away along 5th Street in Greenville, NC.

The petitioner represents and agrees that he is obtaining said video on behalf of his clients the NC Police Benevolent Association and the NC Fraternal Order of Police and / or their chapters to be held and used by them in defense of their members and other law enforcement officers against any explicit or implicit allegations of misfeasance or malfeasance by said officers at any time and that said association / order may publish the same in any equivalent forum or forums in which any allegations whether implicit or explicit against any law enforcement officers are, have been or at any time may be made.

Further, the NC Police Benevolent Association and NC Fraternal Order of Police and / or their chapters may deliver the same to representatives or senators in the North Carolina General Assembly and to the University of North Carolina General Administration and / or Board of Governors with the request that they use the same solely for such purposes as they see fit within their constitutional and statutorily mandated oversight duties for the proper and effective functioning of the UNC system and its constituent institutions as well as their supervisory role over employees of the UNC system or constituent institutions.

It is further agreed that the Greenville Police Department shall maintain and preserve, for a period of one year from the date of the entry of this order, any and all tapes created between the hours of 2100 on Wednesday 25th September, 2019 and 0230 on Thursday 26th September that show Mr. Dan Gerlach in the monitored area of Greenville, NC. This includes but is not limited to views of the area outside of Sup Dogs, Greenville, NC between 2100-2250, Wednesday 25th September, any footage of the area outside of Club 519 Greenville, NC between 2240 and 0030, Wednesday 25th September-Thursday 26th September. Footage showing the outside of the front door of Club 519 between 0140-0200 Thursday September 26th.

If the parties and any other person required by law to be informed agree, at some point within the next twelve months, that such videos may be released to Peter Romary, under the same terms and conditions as are set out herein, then the parties stipulate that they may be released for distribution as outlined above. If no agreement

can be reached then the matter shall come on to be heard upon a properly calendared and noticed date before the Superior Court.

CONCLUSIONS OF LAW:

The parties are properly before the Court and all parties have been properly served.

That the Court has jurisdiction over the subject matter and parties hereto.

That the parties to this proceeding do stipulate and agree to the facts as set forth above which are hereby incorporated by reference as conclusions of law.

NOW THEREFORE IT IS ORDERED ADJUDGED AND DECREED that Petitioner shall be provided with a copy of the Police Surveillance Video showing the person and area outlined in the FINDINGS OF FACT above, that being footage from any and all cameras showing the area outside of 212 E. Fifth Street, Greenville, NC and Mr. Dan Gerlach's presence and activities there between the time of 0210 and 0230 on the morning of Thursday September 26th, 2019.

Further that the video footage set forth in the FINDINGS OF FACT above shall be maintained for a period of one year from the date of the entry of this order and shall, where the parties can reach agreement, be provided to the Petitioner or otherwise may be brought on for a motion regarding the same to be heard in the Superior Court upon proper notice to all parties required by law to receive notice.

NO COSTS are taxed at this time.

This the ____ day of _____, 2019

Superior Court Judge Presiding

On Mon, Oct 21, 2019 at 6:50 AM Peter Romary <peter.romary@qverity.com> wrote:

Apologies -- as an aside, I have been texting with Faris Dixon and he is good to go - when we are ready.

On Mon, Oct 21, 2019 at 5:57 AM Donald Phillips <DKPhillips@greenvillenc.gov> wrote:

Peter:

Although the thought of having this matter completed this week sounds great, I do not believe that can practically occur. For example, as discussed with you by telephone, once you file the N.C.G.S. § 132-1.4A(g) proceeding, "any law enforcement agency personnel whose image or voice is in the recording and the head of that person's employing law enforcement agency," "shall be notified and those persons, or their designated representative, shall be given an opportunity to be heard at any proceeding." So, any and all ECU police officers, ALE, ABC, and GPD officers who may in any portion of the footage requested (to the extent that they are, and herein not saying that they are—I have not seen the recordings), will have to be notified (along

with the heads of their agencies) to determine whether they want to be heard at a hearing. This will take longer than a week.

Assuming this notification prong can be fully addressed without the need for a hearing, then it is conceivable for me to then prepare a proposed Consent Order and submit same to the Court out of session. This will take time for me to prepare and I certainly cannot guarantee that it can be done this week.

I will be in Superior Court most of the day today and will have limited availability.

Thank you.

Donald

Donald K. Phillips

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From: Peter Romary <peter.romary@qverity.com>

Sent: Sunday, October 20, 2019 10:02 PM

To: Donald Phillips <DKPhillips@greenvillenc.gov>

Subject: Petition and Consent Order

Good evening, Donald:

Judge Foster is on the ECU BoV and as such cannot sign a consent order -- however, Judge JC Cole is in town this week and I am informed that if request is narrow (so no PD need information and chance to object) and as long as we can arrange an agreement between us then the signing of a consent order in Chambers and the pick up of the videos (plus preservation of others could be effectuated this week.

The reason for the alacrity is that there is a rumor that a decision will be made this week and, if Gerlach is reinstated, it will be because his story about a "set up" (which as we discussed begins with "corrupt cops") is being accepted.

As you know, Halloween is almost upon us and the State and National PBA and FoP want to be sure that headlines or belief in this "conspiracy theory" does not impact police nor behavior towards police.

The tapes my clients are interested in getting copies of are:

- a) the ones showing Gerlach leaving Sup Dogs with 3-4 people in his group -- important that we have that one -- NO police should be in that per witnesses as none were around
- b) less so, and if any cops in then we will be fine just watching that one.
- c) video of him leaving 519 in an Uber or Lyft with a female and male of college age -- again, if any cops in that then would be happy to just view.
- d) video of him coming up to his car on 5th street, video showing him entering his car and then driving off -- again, per witnesses NO police should be in that as no police were around in the area.

The order would be brief in nature and I'll chat with you about it and petition, but would state that videos are for delivery and use of PBA and FoP and that my clients will also provide copies to the BoG for their oversight of the investigation (the governing board who are separate and distinct from General Administration -- GA were the ones who, I understand authorized and are directing the investigation -- the videos will not be released to the media by my clients except if police officers are explicitly or implicitly accused or it is inferred that officers were involved in a "set up" or "conspiracy" involving Dan Gerlach and then they may be used to defend the police or police officers in the same forum or forums in which such allegations shall have been made.

As a former police officer I hope you agree this is fair as officers cannot speak out for themselves. NO officers were involved in any of this and this is what has caused the extreme upset.

I am taking my wife for minor surgery in the AM but plan to contact Faris and let him know what is going on, then I would come down (having worked on wording of petition and consent order with you) file order, meet you, go and see Judge Cole to get it signed and then pick up the videos and drop them off with my clients --- doing do before any melee could occur with Halloween or any editorial could be written alleging that off duty police and a "dark cabal" set this up -- we are (my clients and I) very concerned about the "pick on GPD" narrative that could end in violence against cops here or elsewhere.

Many thanks, my friend -- apologies for the rushing of this BUT with Judges, police, BoT and BoG members plus "former political adversaries" being blanket accused by this man and his friends, we need to move (on our side) as fast as we can.

Very best wishes,

Peter

--

Peter Romary

Partner and General Counsel, QVerity

Managing Partner, QVerity Legal

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If you as intended recipient have received this e-mail incorrectly, please notify the sender (via e-mail) immediately.

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Peter Romary

Partner and General Counsel, QVerity

Managing Partner, QVerity Legal

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Peter Romary

Partner and General Counsel, QVerity

Managing Partner, QVerity Legal

Donald Phillips

From: Donald Phillips
Sent: Tuesday, October 15, 2019 4:50 PM
To: Peter Romary
Cc: Donald Phillips
Subject: Interim ECU Chancellor Dan Gerlach Investigation--PRLR for Custodial LEA Recording(s)
Attachments: N.C.G.S. 132-1.4A.PDF; NCGS 132-1 4A - Request for Disclosure of Recording.pdf; AOC-CV-270 (04.2017).pdf

PUBLIC RECORDS REQUEST FOR CUSTODIAL LAW ENFORCEMENT AGENCY RECORDING

Name of Requestor: Peter Romary, Esq.
Partner and General Counsel, QVerity
Managing Partner, QVerity Legal
Date of Request: 10/15/2019
Date of Incident: 09/25/2019
GPD Officer(s): None
GPD File No.: None

Mr. Romary:

I understand that you are interested in viewing City of Greenville, Greenville Police Department ("GPD") traffic/public safety camera recordings from September 25, 2019 regarding an investigation of Interim ECU Chancellor Dan Gerlach.

Overview of the law regarding law enforcement recordings: Regarding your request to view the recording(s) at issue, please find attached N.C.G.S. § 132-1.4A, which became effective October 1, 2016. In a nutshell, this law creates very specific procedures for a person who is requesting to either **view** (seek "**disclosure**") or obtain a **copy** (seek "**release**") of any custodial law enforcement agency recording (traffic/public safety camera, body worn camera, dashboard camera, or any other audio or video recording). Requests for "disclosure" of GPD recordings are handled by GPD and the Chief of Police allows or denies "disclosure." A recording can only be "released" by superior court order and only after the person seeking "release" has first "filed" a Petition for Release in superior court.

If you want to VIEW the GPD recording(s): I have attached the *GPD Request for Disclosure of Recording Form*. You will need to complete this form to determine your eligibility to view the portions of the requested recordings. Please then contact Lt. Michael Montanye regarding specific questions and scheduling of those recordings that are applicable to your request for disclosure. Here is Lt. Montanye's contact information:

Lieutenant Michael Montanye
Strategic Services
Greenville Police Department
Email: mmontanye@greenvillenc.gov
Telephone: (252) 329-4835

If you want to RECEIVE A COPY of the GPD recording(s): For your convenience, I have attached the *Petition for Release of Custodial Law Enforcement Agency Recording Form* (AOC-CV-270). Please

complete this form and file this form with the Pitt County Clerk of Superior Court. You will also need to calendar the matter for hearing with the Clerk of Superior Court and the Superior Court Trial Court Coordinator. You will need to properly give notice to all parties as required by the statute. As the attorney that will be handling the matter for the City, I would respectfully request to be copied as well on all documents you file. **If you decide to file a Petition, please give me a call before you file the Petition so that we can discuss the filing and logistics in greater detail.**

Please note that I am out of town at a CLE, but will be back in the office on Thursday. Feel free to call me if you have any questions or would like to discuss. My direct line is (252) 329-4331. If you need to reach me before Thursday, please call my cell (252) 916-9803.

Thank you.

Donald

Donald K. Phillips

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From: Peter Romary <peter.romary@qverity.com>

Sent: Tuesday, October 15, 2019 12:38 PM

To: Donald Phillips <DKPhillips@greenvillenc.gov>

Subject: Surveillance Video - CONFIDENTIAL REQUEST

Good Afternoon, Donald.

My name is Peter Romary, I am an attorney living most of the time in Hillsborough and also Greenville (I will be there tomorrow). I was formerly a PBA // FoP Panel Attorney and was friends with Bill Little -- I practiced law with Galen Braddy for a number of years.

I have been retained by some private parties, including a couple of members of the ECU Board of Trustees and UNC Board of Governors - this is in response to an ever changing story from Dan Gerlach and an allegation of a "set up" by him and some who support him.

The "set up" (which has been outlined online by some) states that a "Cabal" of Judges, Lawyers, BoT, BoG and former political opponents paid 2 off duty police officers to lure Gerlach from Sup Dogs to Club 519. There, so the theory goes, the officers had a "prostitute" they had picked up previously for sale of drugs, waiting to "put Gerlach in compromising positions" so that he could be photographed.

A strange story indeed and one of several changing stories told -- also very unlikely as Gerlach said the trip to

Sup Dogs was a last minute / spur of the moment decision. Withholding charges in return for pay and to set someone up also sounds felonious to me. As such, my clients -- no BoT members have been named just "BoT members" along with Judges seem to be accused in this, what appears to me to be a, "fantasy".

That said, I would like to look at and view the video surveillance on the basis that my clients may be alleged at some time to be on them. I have also spoken to a Judge, friend of 25 years, and they are quite annoyed about this. So, I am writing, requesting access to or copies of GPD surveillance camera footage.

I have down the times that some witnesses have said things occurred -- Gerlach arrived at Sup Dogs between 2100-2130 on the night of Sept 25th. He left at approximately 2230-2250.

So, cameras pointed at or picking up Sup Dogs for the earlier time (as well as parking lot footage from 2100-2130). Then cameras between Sup Dogs and Club 519, including any cameras picking up along the way and showing door of 519 between 2230-2300.

Finally, cameras showing the parking lot behind and in front of Sup Dogs from 2345-0300 (25th-26th) -- I understand his latest story has him going to 2 other clubs after Club 519.

My clients asked for this after some BoT members were asked to produce their cellphones by a private law firm asked to look into this matter (so, somehow this story is being investigated).

We have unnamed Judges, lawyers, BoT, BoG and un-named political rivals from years gone by accused in this story -- Gerlach simply states he "may have been set up" which suggests that off duty officers lured him to a nightclub (not sure why the words "No thanks" were not used).

My request is not for body camera footage and is not so that anything can be displayed online. If these allegations catch hold there is a likelihood that my clients (who for now wish to preserve anonymity because of national press interest) may have to show they were NOT there. Further, there is a public interest in showing that NO police officers were involved in any way, NO judges were involved in any way and that NO conspiracy existed -- I would have hoped that Mr. Gerlach's ever changing story and the fact that the first pictures posted online were videos taken by students, would have ended this.

I know Mike Montanye, whose department these video files are kept in. I will be in Greenville tomorrow and, with your permission pursuant to the General Statutes permitting release of videos (albeit body camera) I would very much like to get the videos and clear this up. In essence allegations have been made suggesting people are on these videos -- no allegation has yet been made that BoT or BoG members were present BUT it would not take much for someone to suggest they were, alleging that they wanted to see "a plan in action" -- we contend that this is nonsense BUT, rather than relying on videos that may be purged, I would rather have said video and review it to refute any such allegation that comes along.

Further, I would like, pro bono, as I did many times before, to assist and protect officers from baseless allegations made by people whom, I contend, are lying to cover up drunken foolishness that may or may not have involved a sex act and / or assault on a female.

Thank you for your time and assistance -- as I say, I will be down in Greenville tomorrow and, with your permission, could arrange to get these from Mike.

Very best wishes,

Peter

--

Peter Romary

Partner and General Counsel, QVerity

Managing Partner, QVerity Legal

§ 132-1.4A. Law enforcement agency recordings.

(a) Definitions. – The following definitions apply in this section:

- (1) Body-worn camera. – An operational video or digital camera or other electronic device, including a microphone or other mechanism for allowing audio capture, affixed to the uniform or person of law enforcement agency personnel and positioned in a way that allows the camera or device to capture interactions the law enforcement agency personnel has with others.
- (2) Custodial law enforcement agency. – The law enforcement agency that owns or leases or whose personnel operates the equipment that created the recording at the time the recording was made.
- (3) Dashboard camera. – A device or system installed or used in a law enforcement agency vehicle that electronically records images or audio depicting interaction with others by law enforcement agency personnel. This term does not include body-worn cameras.
- (4) Disclose or disclosure. – To make a recording available for viewing or listening to by the person requesting disclosure, at a time and location chosen by the custodial law enforcement agency. This term does not include the release of a recording.
- (5) Personal representative. – A parent, court-appointed guardian, spouse, or attorney of a person whose image or voice is in the recording. If a person whose image or voice is in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person's surviving spouse, parent, or adult child; the deceased person's attorney; or the parent or guardian of a surviving minor child of the deceased.
- (6) Recording. – A visual, audio, or visual and audio recording captured by a body-worn camera, a dashboard camera, or any other video or audio recording device operated by or on behalf of a law enforcement agency or law enforcement agency personnel when carrying out law enforcement responsibilities. This term does not include any video or audio recordings of interviews regarding agency internal investigations or interviews or interrogations of suspects or witnesses.
- (7) Release. – To provide a copy of a recording.

(b) Public Record and Personnel Record Classification. – Recordings are not public records as defined by G.S. 132-1. Recordings are not personnel records as defined in Part 7 of Chapter 126 of the General Statutes, G.S. 160A-168, or G.S. 153A-98.

(c) Disclosure; General. – Recordings in the custody of a law enforcement agency shall be disclosed only as provided by this section. A person requesting disclosure of a recording must make a written request to the head of the custodial law enforcement agency that states the date and approximate time of the activity captured in the recording or otherwise identifies the activity with reasonable particularity sufficient to identify the recording to which the request refers.

The head of the custodial law enforcement agency may only disclose a recording to the following:

- (1) A person whose image or voice is in the recording.
- (2) A personal representative of an adult person whose image or voice is in the recording, if the adult person has consented to the disclosure.
- (3) A personal representative of a minor or of an adult person under lawful guardianship whose image or voice is in the recording.

- (4) A personal representative of a deceased person whose image or voice is in the recording.
- (5) A personal representative of an adult person who is incapacitated and unable to provide consent to disclosure.

When disclosing the recording, the law enforcement agency shall disclose only those portions of the recording that are relevant to the person's request. A person who receives disclosure pursuant to this subsection shall not record or copy the recording.

(d) Disclosure; Factors for Consideration. – Upon receipt of the written request for disclosure, as promptly as possible, the custodial law enforcement agency must either disclose the portion of the recording relevant to the person's request or notify the requestor of the custodial law enforcement agency's decision not to disclose the recording to the requestor.

The custodial law enforcement agency may consider any of the following factors in determining if a recording is disclosed:

- (1) If the person requesting disclosure of the recording is a person authorized to receive disclosure pursuant to subsection (c) of this section.
- (2) If the recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
- (3) If disclosure would reveal information regarding a person that is of a highly sensitive personal nature.
- (4) If disclosure may harm the reputation or jeopardize the safety of a person.
- (5) If disclosure would create a serious threat to the fair, impartial, and orderly administration of justice.
- (6) If confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.

(e) Appeal of Disclosure Denial. – If a law enforcement agency denies disclosure pursuant to subsection (d) of this section, or has failed to provide disclosure more than three business days after the request for disclosure, the person seeking disclosure may apply to the superior court in any county where any portion of the recording was made for a review of the denial of disclosure. The court may conduct an in-camera review of the recording. The court may order the disclosure of the recording only if the court finds that the law enforcement agency abused its discretion in denying the request for disclosure. The court may only order disclosure of those portions of the recording that are relevant to the person's request. A person who receives disclosure pursuant to this subsection shall not record or copy the recording. An order issued pursuant to this subsection may not order the release of the recording.

In any proceeding pursuant to this subsection, the following persons shall be notified and those persons, or their designated representative, shall be given an opportunity to be heard at any proceeding: (i) the head of the custodial law enforcement agency, (ii) any law enforcement agency personnel whose image or voice is in the recording and the head of that person's employing law enforcement agency, and (iii) the District Attorney. Actions brought pursuant to this subsection shall be set down for hearing as soon as practicable, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(f) Release of Recordings to Certain Persons; Expedited Process. – Notwithstanding the provisions of subsection (g) of this section, a person authorized to receive disclosure pursuant to subsection (c) of this section, or the custodial law enforcement agency, may petition the superior court in any county where any portion of the recording was made for an order releasing the recording to a person authorized to receive disclosure. There shall be no fee for filing the petition which shall be filed on a form approved by the Administrative Office of the Courts and shall state the date and approximate time of the activity captured in the recording, or otherwise identify the activity with reasonable particularity sufficient to identify the recording. If the petitioner is a person authorized to receive disclosure, notice and an opportunity to be

heard shall be given to the head of the custodial law enforcement agency. Petitions filed pursuant to this subsection shall be set down for hearing as soon as practicable and shall be accorded priority by the court.

The court shall first determine if the person to whom release of the recording is requested is a person authorized to receive disclosure pursuant to subsection (c) of this section. In making this determination, the court may conduct an in-camera review of the recording and may, in its discretion, allow the petitioner to be present to assist in identifying the image or voice in the recording that authorizes disclosure to the person to whom release is requested. If the court determines that the person is not authorized to receive disclosure pursuant to subsection (c) of this section, there shall be no right of appeal and the petitioner may file an action for release pursuant to subsection (g) of this section.

If the court determines that the person to whom release of the recording is requested is a person authorized to receive disclosure pursuant to subsection (c) of this section, the court shall consider the standards set out in subsection (g) of this section and any other standards the court deems relevant in determining whether to order the release of all or a portion of the recording. The court may conduct an in-camera review of the recording. The court shall release only those portions of the recording that are relevant to the person's request and may place any conditions or restrictions on the release of the recording that the court, in its discretion, deems appropriate.

(g) Release of Recordings; General; Court Order Required. – Recordings in the custody of a law enforcement agency shall only be released pursuant to court order. Any custodial law enforcement agency or any person requesting release of a recording may file an action in the superior court in any county where any portion of the recording was made for an order releasing the recording. The request for release must state the date and approximate time of the activity captured in the recording, or otherwise identify the activity with reasonable particularity sufficient to identify the recording to which the action refers. The court may conduct an in-camera review of the recording. In determining whether to order the release of all or a portion of the recording, in addition to any other standards the court deems relevant, the court shall consider the applicability of all of the following standards:

- (1) Release is necessary to advance a compelling public interest.
- (2) The recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law.
- (3) The person requesting release is seeking to obtain evidence to determine legal issues in a current or potential court proceeding.
- (4) Release would reveal information regarding a person that is of a highly sensitive personal nature.
- (5) Release may harm the reputation or jeopardize the safety of a person.
- (6) Release would create a serious threat to the fair, impartial, and orderly administration of justice.
- (7) Confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.
- (8) There is good cause shown to release all portions of a recording.

The court shall release only those portions of the recording that are relevant to the person's request, and may place any conditions or restrictions on the release of the recording that the court, in its discretion, deems appropriate.

In any proceeding pursuant to this subsection, the following persons shall be notified and those persons, or their designated representative, shall be given an opportunity to be heard at any proceeding: (i) the head of the custodial law enforcement agency, (ii) any law enforcement agency personnel whose image or voice is in the recording and the head of that person's employing law enforcement agency, and (iii) the District Attorney. Actions brought pursuant to

this subsection shall be set down for hearing as soon as practicable, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(h) Release of Recordings; Law Enforcement Purposes. – Notwithstanding the requirements of subsections (c), (f), and (g) of this section, a custodial law enforcement agency shall disclose or release a recording to a district attorney (i) for review of potential criminal charges, (ii) in order to comply with discovery requirements in a criminal prosecution, (iii) for use in criminal proceedings in district court, or (iv) any other law enforcement purpose, and may disclose or release a recording for any of the following purposes:

- (1) For law enforcement training purposes.
- (2) Within the custodial law enforcement agency for any administrative, training, or law enforcement purpose.
- (3) To another law enforcement agency for law enforcement purposes.

(i) Retention of Recordings. – Any recording subject to the provisions of this section shall be retained for at least the period of time required by the applicable records retention and disposition schedule developed by the Department of Natural and Cultural Resources, Division of Archives and Records.

(j) Agency Policy Required. – Each law enforcement agency that uses body-worn cameras or dashboard cameras shall adopt a policy applicable to the use of those cameras.

(k) No civil liability shall arise from compliance with the provisions of this section, provided that the acts or omissions are made in good faith and do not constitute gross negligence, willful or wanton misconduct, or intentional wrongdoing.

(l) Fee for Copies. – A law enforcement agency may charge a fee to offset the cost incurred by it to make a copy of a recording for release. The fee shall not exceed the actual cost of making the copy.

(m) Attorneys' Fees. – The court may not award attorneys' fees to any party in any action brought pursuant to this section. (2016-88, s. 1.)

Physical Address:
500 South Greene Street
Greenville, North Carolina 27834

Mailing Address:
Post Office Box 7207
Greenville, North Carolina 27835-7207



Telephone: (252) 329-4333
Facsimile: (252) 329-4792

Mark R. Holtzman, Chief of Police
mholtzman@greenvillenc.gov

For Internal Use Only:	
Report No.:	

GREENVILLE POLICE DEPARTMENT

Request for Disclosure of Recording Pursuant to N.C.G.S. § 132-1.4A

PLEASE NOTE:

Pursuant to N.C.G.S. § 132-1.4A(a)(4), "disclosure" means to make a recording available for viewing or listening to by the person requesting disclosure, at a time and location chosen by the Greenville Police Department, the custodial law enforcement agency. The term "disclosure" does not include the release ("to provide a copy") of a recording.

Person Requesting Disclosure of Recording—Requestor's Information

Name: _____ Home Phone: _____
Date of Birth: _____ Age: _____ Cell Phone: _____
Address: _____ City: _____ State: _____ Zip Code: _____
Email: _____

What is the date, approximate time of the activity captured in the recording? Date: _____ Approximate Time: _____ ☐ a.m. ☐ p.m.

Report, Citation, or Arrest Number (if known): _____

Describe any other information identifying the activity captured in the recording or otherwise describing the event:

Type of Recording (check all that apply): ☐ Body-worn camera ☐ Dashboard camera ☐ Other Recording

PLEASE NOTE:

Recordings are not public records as defined by N.C.G.S. § 132-1 and are not personnel records as defined in Part 7 of Chapter 126 of the General Statutes, N.C.G.S. § 160A-168, or N.C.G.S. § 153A-98. Recordings do not include any video or audio recordings of interviews regarding agency internal investigations or interviews or interrogations of suspects or witnesses. N.C.G.S. §§ 132-1.4A(a)(6) and (b).

As the Requestor, I am (please check all that apply):

- ☐ (1) A person whose image or voice is in the recording.
- ☐ (2) A personal representative (☐ a parent, ☐ court-appointed guardian, ☐ spouse, or ☐ attorney) of an adult person whose image or voice is in the recording, and the adult person has consented to the disclosure.

(A copy of the legal documentation establishing your authority to make this request and written consent must be included with this request.)

Provide below the name, address, and telephone number of the adult person whose image or voice is in the recording:

- ☐ (3) A personal representative (☐ a parent, ☐ court-appointed guardian, ☐ spouse, or ☐ attorney) of a minor or of an adult person under lawful guardianship whose image or voice is in the recording.

(A copy of the legal documentation establishing your authority to make this request must be included with this request.)

Provide below the name, address, and age of the minor or adult person under lawful guardianship whose image or voice is in the recording:

- ☐ (4) A personal representative (☐ the personal representative of the estate of the deceased person; ☐ the deceased person's surviving spouse, ☐ the deceased person's parent, ☐ the deceased person's adult child; ☐ the deceased person's attorney; or ☐ the parent or ☐ the guardian of a surviving minor child) of a deceased person whose image or voice is in the recording.

(A copy of the legal documentation establishing your authority to make this request must be included with this request.)

Provide below the name, address, and date of death of the deceased person whose image or voice is in the recording:

- ☐ (5) A personal representative (☐ a parent, ☐ court-appointed guardian, ☐ spouse, or ☐ attorney) of an adult person who is incapacitated and unable to provide consent to disclosure.

(A copy of the legal documentation establishing your authority to make this request must be included with this request.)

Provide below the name, address, and current location of the adult person whose image or voice is in the recording and who is alleged to be incapacitated and unable to provide consent (please also specify why you contend the adult person is incapacitated and unable to provide consent to disclosure):

PLEASE NOTE:

Upon receipt of the written request for disclosure, as promptly as possible, the Greenville Police Department must either disclose the portion of the recording relevant to the person's request or notify the requestor of the Greenville Police Department's decision not to disclose the recording to the requestor. N.C.G.S. § 132-1.4A(d). When disclosing the recording, the Greenville Police Department shall disclose only those portions of the recording that are relevant to the person's request. A person who receives disclosure pursuant to N.C.G.S. § 132-1.4A(c) shall not record or copy the recording. If the Greenville Police Department denies disclosure pursuant to subsection N.C.G.S. § 132-1.4A(d), or has failed to provide disclosure more than three (3) business days after the request for disclosure, the person seeking disclosure may apply to the superior court in any county where any portion of the recording was made for a review of the denial of disclosure.

I have read and understand this document.

Signature: _____ Date of Request: _____

Printed Name: _____

FOR INTERNAL USE ONLY

Received By: _____ Date of Receipt: _____

Time of Receipt: _____ ☐ a.m. ☐ p.m.

NOTES:

STATE OF NORTH CAROLINA

File No. _____

In The General Court Of Justice
Superior Court Division_____
County**IN THE MATTER OF
CUSTODIAL LAW ENFORCEMENT AGENCY
RECORDING SOUGHT BY:**

Name Of Petitioner _____

Address _____

City, State, Zip _____

Phone No. _____

Fax No. _____

Email Address _____

**PETITION FOR RELEASE OF
CUSTODIAL LAW ENFORCEMENT AGENCY
RECORDING**☐ G.S. 132-1.4A(f) – Person authorized to receive disclosure
(No Filing Fee Applies)☐ G.S. 132-1.4A(g) – General
(CVS Filing Fee Applies)

I, the above-named petitioner, request the release of a custodial law enforcement agency recording to _____,
state that at least some portion of the law enforcement agency recording was made in this county, and I further state the following:

(Include date and approximate time of activity captured in the recording, or otherwise identify the activity with particularity sufficient to identify the recording at issue.)

**CERTIFICATE OF SERVICE
ON HEAD OF CUSTODIAL LAW ENFORCEMENT AGENCY**

I certify that a filed copy of this Petition was served on the head of the custodial law enforcement agency as follows:

☐ Personal Delivery☐ By Regular Mail, US postage prepaid, addressed as follows:**CERTIFICATE OF SERVICE ON DISTRICT ATTORNEY**

I certify that a filed copy of this Petition was served on the District Attorney as follows (only required for general release):

☐ Personal Delivery☐ By Regular Mail, US postage prepaid, addressed as follows:

Date _____

Petitioner's Signature _____

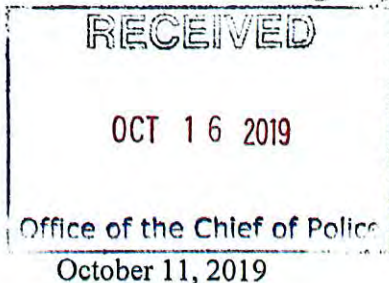


**Yates,
McLamb &
Weyher, L.L.P.**
ATTORNEYS AT LAW

Excellence & Integrity

434 Fayetteville Street
Suite 2200
Raleigh, NC 27601

P.O. Box 2889
Raleigh, NC 27602-2889
Telephone: (919) 835-0900
Fax: (919) 835-0910



William P. Stanley
Paralegal

Direct Line: (919) 719-6014
E-mail: wstanley@ymwlaw.com
Website: www.ymwlaw.com

Clerk of Court
Pitt County Superior
P.O. Box 6067
Greenville, NC 27835

Re: In the matter of Custodial Law Enforcement Agency Recording
Our File: 603-3260

Dear Sir or Madam:

Please find enclosed the originals and one copy each of the General Action Cover Sheet and Petition for Release of Custodial Law Enforcement Agency Recording. Please file the originals with the Court and return the copies, file-stamped, in the enclosed self-addressed stamped envelope.

If you have any questions or concerns, please feel free to contact us.

Cordially,

William P. Stanley
Paralegal

WPS/wps
Enclosures

CC: David L. Sherlin (w/enc)
David F. Kirby (w/enc)
Joseph Z. Frost (w/enc)
Jose Estrella (w/enc)
Mark R. Holtzman (w/enc)
Officer Daniel Nock (w/enc)
Det. Marcus Uvalle (w/enc)
Det. Niki Verdin (w/enc)

October 10, 2019

Page 2

The Honorable Faris C. Dixon, Jr. (w/enc)
Donald K. Phillips (w/enc)
Officer R. Kurtz (w/enc)
Det. Dan Wilkins (w/enc)
Lt. Scott Stanton (w/enc)
Lyndsey H. Cain (w/enc)
A. Charles Ellis (w/enc)
Ruthie Sheets (w/enc)

STATE OF NORTH CAROLINA

File No.

PITT County

In The General Court Of Justice
☐ District ☒ Superior Court Division

Name And Address Of Plaintiff 1

IN THE MATTER OF CUSTODIAL LAW ENFORCEMENT
 AGENCY RECORDING SOUGHT BY ZETA TAU ALPHA
 FRATERNITY HOUSING CORPORATION AND IOTA RHO
 CHAPTER OF ZETA TAU ALPHA

Name And Address Of Plaintiff 2

GENERAL

CIVIL ACTION COVER SHEET

☒ INITIAL FILING ☐ SUBSEQUENT FILING

Rule 5(b), General Rules of Practice For Superior and District Courts

Name And Address Of Attorney Or Party, If Not Represented (complete for initial appearance or change of address)

John T. Honeycutt
 Yates, McLamb & Weyher, LLP
 P.O. Box 2889
 Raleigh, NC 27602-2889

Telephone No.

919-835-0900

Cellular Telephone No.

NC Attorney Bar No.

19075

Attorney E-Mail Address

jhoneycutt@ymwlaw.com

VERSUS

Name Of Defendant 1

Summons Submitted ☐ Yes ☐ No

☒ Initial Appearance in Case

☐ Change of Address

Name Of Defendant 2

Name Of Firm

Yates, McLamb & Weyher, LLP

FAX No.

919-835-0910

Summons Submitted ☐ Yes ☐ No

Counsel for

☐ All Plaintiffs ☐ All Defendants ☒ Only (list party(ies) represented)

PETITIONERS

☐ Jury Demanded In Pleading
☐ Complex Litigation

☐ Amount in controversy does not exceed \$15,000
☐ Stipulate to arbitration

TYPE OF PLEADING

(check all that apply)

- ☐ Amend (AMND)
- ☐ Amended Answer/Reply (AMND-Response)
- ☐ Amended Complaint (AMND)
- ☐ Assess Costs (COST)
- ☐ Answer/Reply (ANSW-Response) (see Note)
- ☐ Change Venue (CHVN)
- ☐ Complaint (COMP)
- ☐ Confession Of Judgment (CNJF)
- ☐ Consent Order (CONS)
- ☐ Consolidate (CNSL)
- ☐ Contempt (CNTP)
- ☐ Continue (CNTN)
- ☐ Compel (CMPL)
- ☐ Counterclaim (CTCL) Assess Court Costs
- ☐ Crossclaim (list on back) (CRSS) Assess Court Costs
- ☐ Dismiss (DISM) Assess Court Costs
- ☐ Exempt/Waive Mediation (EXMD)
- ☐ Extend Statute Of Limitations, Rule 9 (ESOL)
- ☐ Extend Time For Complaint (EXCO)
- ☐ Failure To Join Necessary Party (FJNP)

(check all that apply)

- ☐ Failure To State A Claim (FASC)
- ☐ Implementation Of Wage Withholding In Non-IV-D Cases (OTHR)
- ☐ Improper Venue/Division (IMVN)
- ☐ Including Attorney's Fees (ATTY)
- ☐ Intervene (INTR)
- ☐ Interplead (OTHR)
- ☐ Lack Of Jurisdiction (Person) (LJPN)
- ☐ Lack Of Jurisdiction (Subject Matter) (LJSM)
- ☐ Modification Of Child Support In IV-D Actions (MSUP)
- ☐ Notice Of Dismissal With Or Without Prejudice (VOLD)
- ☐ Petition To Sue As Indigent (OTHR)
- ☐ Rule 12 Motion In Lieu Of Answer (MDLA)
- ☐ Sanctions (SANC)
- ☐ Set Aside (OTHR)
- ☐ Show Cause (SHOW)
- ☐ Transfer (TRFR)
- ☐ Third Party Complaint (list Third Party Defendants on back) (TPCL)
- ☐ Vacate/Modify Judgment (VCMD)
- ☐ Withdraw As Counsel (WDCN)
- ☒ Other (specify and list each separately)
 Petition for Release of Custodial Law Enforcement Agency Recording

NOTE: All filings in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts, and the Clerk of Superior Court shall require a party to refile a filing which does not include the required cover sheet. For subsequent filings in civil actions, the filing party must either include a General Civil (AOC-CV-751), Motion (AOC-CV-752), or Court Action (AOC-CV-753) cover sheet.

CLAIMS FOR RELIEF		
<input type="checkbox"/> Administrative Appeal (ADMA) <input type="checkbox"/> Appointment Of Receiver (APRC) <input type="checkbox"/> Attachment/Garnishment (ATTC) <input type="checkbox"/> Claim And Delivery (CLMD) <input type="checkbox"/> Collection On Account (ACCT) <input type="checkbox"/> Condemnation (CNDM) <input type="checkbox"/> Contract (CNTR) <input type="checkbox"/> Discovery Scheduling Order (DSCH) <input type="checkbox"/> Injunction (INJU)	<input type="checkbox"/> Limited Driving Privilege - Out-Of-State Convictions (PLDP) <input type="checkbox"/> Medical Malpractice (MDML) <input type="checkbox"/> Minor Settlement (MSTL) <input type="checkbox"/> Money Owed (MNYO) <input type="checkbox"/> Negligence - Motor Vehicle (MVNG) <input type="checkbox"/> Negligence - Other (NEGO) <input type="checkbox"/> Motor Vehicle Lien G.S. 44A (MVLN) <input type="checkbox"/> Possession Of Personal Property (POPP)	<input type="checkbox"/> Product Liability (PROD) <input type="checkbox"/> Real Property (RLPR) <input type="checkbox"/> Specific Performance (SPPR) <input type="checkbox"/> Other (specify and list each separately) Court Approval of Petition for Release of Custodial Law Enforcement Agency Recording
Date <u>10/11/19</u>		Signature Of Attorney/Party

FEES IN G.S. 7A-308 APPLY

Assert Right Of Access (ARAS)
 Substitution Of Trustee (Judicial Foreclosure) (RSOT)
 Supplemental Procedures (SUPR)

PRO HAC VICE FEES APPLY

Motion For Out-Of-State Attorney To Appear In NC Courts In A Civil Or Criminal Matter (Out-Of-State Attorney/Pro Hac Vice Fee)

No.	<input type="checkbox"/> Additional Plaintiff(s)		
No.	<input type="checkbox"/> Additional Defendant(s) <input type="checkbox"/> Third Party Defendant(s)		Summons Submitted
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No

Plaintiff(s) Against Whom Counterclaim Asserted

Defendant(s) Against Whom Crossclaim Asserted

STATE OF NORTH CAROLINA

File No.

19 CVS

PITT

County

In The General Court Of Justice
Superior Court DivisionIN THE MATTER OF
CUSTODIAL LAW ENFORCEMENT AGENCY
RECORDING SOUGHT BY:

Name Of Petitioner

Zeta Tau Alpha Fraternity Housing Corporation and
Iota Rho Chapter of Zeta Tau Alpha

Address

c/o John T. Honeycutt, Esq.
Yates, McLamb & Weyher, LLP
Post Office Box 2889

City, State, Zip

Raleigh, NC 27602-2889

Phone No.

(919) 835-0900

Fax No.

(919) 835-0910

Email Address

jhoneycutt@ymwlaw.com

PETITION FOR RELEASE OF
CUSTODIAL LAW ENFORCEMENT AGENCY
RECORDING☐ G.S. 132-1.4A(f) – Person authorized to receive disclosure
(No Filing Fee Applies)☒ G.S. 132-1.4A(g) – General
(CVS Filing Fee Applies)

I, the above-named petitioner, request the release of a custodial law enforcement agency recording to (Please see Attachment A). State that at least some portion of the law enforcement agency recording was made in this county, and I further state the following: Zeta Tau Alpha Fraternity Housing Corporation and Iota Rho Chapter of Zeta Tau Alpha (hereinafter "Zeta entities"), by and through counsel, move the Court per N.C.G.S. § 132-1.4A(g), for an Order permitting and directing the City of Greenville, Greenville Police Department to release copies of any recordings, including video and audio recordings, obtained during or related to the City of Greenville Police Department's investigation of alleged burglary or breaking and entering and sexual assault at the Zeta Tau Alpha Chapter House in Greenville, North Carolina on February 20, 2016. In support of the Petition, the Zeta entities submit the following:

(Please see Attachment A)

(Include date and approximate time of activity captured in the recording, or otherwise identify the activity with particularity sufficient to identify the recording at issue.)

CERTIFICATE OF SERVICE
ON HEAD OF CUSTODIAL LAW ENFORCEMENT AGENCY

I certify that a filed copy of this Petition was served on the head of the custodial law enforcement agency as follows:

- ☐ Personal Delivery
☒ By Regular Mail, US postage prepaid, addressed as follows:

Please see the Attached Certificate of Service

CERTIFICATE OF SERVICE ON DISTRICT ATTORNEY

I certify that a filed copy of this Petition was served on the District Attorney as follows (only required for general release):

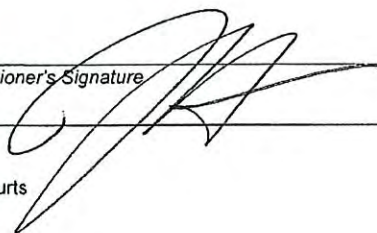
- ☐ Personal Delivery
☒ By Regular Mail, US postage prepaid, addressed as follows:

Please see the Attached Certificate of Service

Date

10/11/17

Petitioner's Signature



John T. Honeycutt, Attorney for Petitioner

STATE OF NORTH CAROLINA
COUNTY OF PITT

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO.: 19 CVS _____

IN THE MATTER OF CUSTODIAL)
LAW ENFORCEMENT AGENCY)
RECORDING SOUGHT BY:)

ATTACHMENT A

Zeta Tau Alpha Fraternity Housing)
Corporation and Iota Rho Chapter of)
Zeta Tau Alpha;)
And All Parties Referenced in the Civil)
Actions Below,)
Petitioner.)

1. The City of Greenville, Greenville Police Department ("GPD") responded to a 911 call at the Zeta Tau Alpha Chapter House in the early morning of February 20, 2016, and took a report of a breaking and entering or burglary and sexual assault and rape. Thereafter, GPD commenced an investigation (GPD Criminal Investigative File No.: 2016-11894) culminating in criminal charges against Jose Estrella ("Mr. Estrella") for breaking and entering and sexual assault and rape of Lindsey E. Smith ("Ms. Smith").

2. Mr. Estrella stood trial on the criminal charges. He was acquitted of rape but convicted of breaking and entering.

2. Ms. Smith has sued Mr. Estrella for sexual assault and rape and has sued the Zeta entities and Amanda Wyant for alleged negligence leading to the claimed sexual assault and rape. The case caption is as follows: *Lindsey E. Smith v. Jose Estrella; Iota Rho Chapter of Zeta Tau Alpha at East Carolina University, an unincorporated Association; Zeta Tau Alpha Fraternity Housing Corporation; and Amanda Wyant* (Johnston County File No.: 19 CVS 2871).

3. Ms. Smith has also sued Johnson Controls, Tyco Integrated Security, Michael Moore, and Designco, Inc, in a separate action for their alleged negligence leading to the claimed sexual assault and rape. The case caption is as follows: *Lindsey E. Smith v. Johnson Controls Security Solutions, LLC; Tyco Integrated Security LLC; Designco Construction, Inc.; and Michael Moore* (Pitt County File No.: 19 CVS 508).

4. If GPD officers collected any video from GPD body-worn cameras during their response to the 911 call from the Zeta Tau Alpha Chapter House on February 20, 2016, that video footage may show the exterior and interior of the chapter house and may have recorded what people at the house that evening said in response to officer inquiries.

5. Any video footage obtained by GPD during its investigation may be relevant to Ms. Smith's claims and the named defendants' defenses in these two pending civil actions.

6. If GPD obtained other recordings in the course of its investigation of the alleged rape and breaking and entering, any other recordings may also be relevant to the claims and defenses in the underlying civil actions.

7. Insofar as the Zeta entities are aware, disclosure and release to counsel for all named parties in the herein described two pending civil actions of any recordings obtained by GPD in the course of its investigation or response to the alleged rape and breaking and entering would not: 1) involve disclosure of information otherwise confidential or exempt from disclosure or release, except that the information is a record of criminal investigation and/or record of criminal intelligence information; 2) would not reveal information about a person that is of a highly sensitive personal nature; 3) would not harm the reputation of or jeopardize the safety of a person; 4) would not create a serious threat to the fair, impartial, and orderly administration of justice; and 5) would not jeopardize either an active or inactive internal or criminal investigation or potential internal or criminal investigation.

WHEREFORE, the Zeta entities request an Order from the Court permitting and directing the City of Greenville, Greenville Police Department to release to counsel for all named parties in the above-referenced two pending civil actions, all recordings, as defined in N.C.G.S § 132-1.4A, relating to GPD Criminal Investigative File No.: 2016-11894 and the GPD's response to and its investigation of the alleged rape and breaking and entering of February, 20, 2016.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the foregoing was served on the following parties to this action by: () Federal Express () hand delivery (x) by depositing a copy of the same in the United States Mail postage prepaid and addressed to:

David L. Sherlin, Esq.
Holt Sherlin, LLP
P.O. Box 10430
Raleigh, NC 27605
Attorneys for Lindsey E. Smith

David F. Kirby, Esq.
Catherine E. Edwards, Esq.
Edwards Kirby, LLP
P.O. Box 17005
Raleigh, NC 27619
Attorneys for Lindsey E. Smith

Joseph Z. Frost, Esq.
Stubbs & Perdue, P.A.
9208 Falls of Neuse Road, Suite 201
Raleigh, NC 27615
Attorneys for Jose Estrella

Jose Estrella
1365 Lee Johnson Road
Dunn, NC 28334

Mark R. Holtzman
Chief of Police
Greenville Police Department
P.O. Box 7207
Greenville, NC 27835-7207

Officer Daniel Nock
Greenville Police Department
P.O. Box 7207
Greenville, NC 27835-7207

Detective Marcus Uvalle
Greenville Police Department
P.O. Box 7207
Greenville, NC 27835-7207

Detective Niki Verdin
Greenville Police Department
P.O. Box 7207
Greenville, NC 27835-7207

The Honorable Faris C. Dixon, Jr.
Pitt County District Attorney
P.O. Box 8185
Greenville, NC 27835-8185

Donald K. Phillips
Assistant City Attorney
City of Greenville
P.O. Box 7207
Greenville, NC 27835-7207

Officer R. Kurtz
Greenville Police Department
P.O. Box 7207
Greenville, NC 27835-7207

Detective Dan Wilkins
Greenville Police Department
P.O. Box 7207
Greenville, NC 27835-7207

Lieutenant Scott Stanton
Greenville Police Department
P.O. Box 7207
Greenville, NC 27835-7207

Lyndsey H. Cain
Williams & Connolly, LLP
725 Twelfth Street, NW
Washington, DC 20005

A. Charles Ellis
Ward and Smith, PA
P.O. Box 8088
Greenville, NC 27835-8088

Ruthie Sheets
Harris Creech Ward and Blackerby, PA
P.O. Drawer 1168
New Bern, NC 28563-1168

This the 11 day of October, 2019.

YATES, McLAMB & WEYHER, L.L.P.

By


JOHN T. HONEYCUTT

North Carolina State Bar No.: 19075

*Attorney for Defendants Iota Rho Chapter of Zeta
Tau Alpha; Zeta Tau Alpha; and Amanda Wyant*

Post Office Box 2889

Raleigh, North Carolina 27602

Tel: 919/835-0900; Fax: 919/835-0910

1117417

STATE OF NORTH CAROLINA

File No.

19 CVS 1063

PITT County

FILED

In The General Court Of Justice
Superior Court DivisionIN THE MATTER OF
CUSTODIAL LAW ENFORCEMENT AGENCY
RECORDING SOUGHT BY:

2019 APR -8 A 9:19

Name Of Petitioner

GERALD LEE OUTLAW

Address

c/o Ann C. Ochsner, attorney of record for Plaintiff
Whitley Law Firm
3301 Benson Drive, Suite 120

City, State, Zip

Raleigh, NC 27609

Phone No.

919-785-5000

Fax No.

919-785-3729

Email Address

aco@whitleylawfirm.com

PITT CO., C.S. PETITION FOR RELEASE OF
CUSTODIAL LAW ENFORCEMENT AGENCY
RECORDING☐ G.S. 132-1.4A(f) -- Person authorized to receive disclosure
(No Filing Fee Applies)☒ G.S. 132-1.4A(g) -- General
(CVS Filing Fee Applies)

I, the above-named petitioner, request the release of a custodial law enforcement agency recording to my attorney of record, state that at least some portion of the law enforcement agency recording was made in this county, and I further state the following: Gerald Lee Outlaw was involved in a motor vehicle collision within the city limits of Greenville on that section of E. 5th St. between Beech Street and Sycamore Street. Gerald Lee Outlaw seeks to recover compensatory damages for bodily injuries arising from the collision and currently is a Plaintiff in a pending lawsuit, Bertie County file number 18 CVS 296. Upon information and belief, the City of Greenville and/or the Greenville Police Department has, in its possession, recordings obtained from city operated surveillance cameras depicting the operation of one or more of the vehicles involved in the collision prior to and potentially the actual collision. At issue in the pending civil lawsuit is the alleged negligent and grossly negligent operation of a motor vehicle by Dan Kenneth Wooten, III, among other issues. Mr. Wooten died as a result of the collision and therefore images depicting his operation of the motor vehicle prior to the collision is material to the claims and defenses asserted in the civil action. A copy of the DMV-349 Crash Report from the May 8, 2018 collision is attached to this Petition as Exhibit A.

(Include date and approximate time of activity captured in the recording, or otherwise identify the activity with particularity sufficient to identify the recording at issue.)

CERTIFICATE OF SERVICE
ON HEAD OF CUSTODIAL LAW ENFORCEMENT AGENCY

I certify that a filed copy of this Petition was served on the head of the custodial law enforcement agency as follows:

☐ Personal Delivery☒ By Regular Mail, US postage prepaid, addressed as follows:

City of Greenville
c/o Ann E. Wall, City Manager
200 West Fifth Street
Greenville, NC 27834

CERTIFICATE OF SERVICE ON DISTRICT ATTORNEY

I certify that a filed copy of this Petition was served on the District Attorney as follows (only required for general release):

☐ Personal Delivery☒ By Regular Mail, US postage prepaid, addressed as follows:

Faris Dixon
District Attorney, Judicial District 3A
P.O. Box 8185
Greenville, NC 27835-8185

Date

APRIL 3, 2019

Petitioner's Signature

Ann C Ochsner

105480786

Date Received by DMV
06/01/2018

2

No. of Units Involved

Form 1 of 1

☒ Supplemental Report☐ Non-ReportableDate
05/08/2018County
PittTime
05:42
(24 Hour Clock)Local Use/Police Area
2018-2928533 Relation to Roadway Surface 1 Crash ☒ In Near GREENVILLE

on E 5TH ST

Highway Number, or Highway, Street (If ramp or service road, indicate on line)

from BEECH ST

Use Highway Number, Street Name or Adjacent County or State Line

Ramp or Service Road

(R.R. Crossing # _____)

N S E W

N S E W

toward SYCAMORE ST

Use Highway Number, Street Name or Adjacent County or State Line

outside municipal

Miles 104

(0.1 Intersection)

Latitude

Longitude

Altitude

UNIT #1 ☒ VEHICLE ☐ PEDESTRIAN ☐ HIT & RUN ☐ COMMERCIAL VEHICLE

Driver DAN KENNETH WOOTEN III

First Middle Last Suffix

Address 4231 MCGREGORS DOWNS RD

City GREENVILLE State NC Zip 278589762

Same Address on Driver's Phone H (252) 531-1592

License? ☒ Yes ☐ No Numbers W (252) 689-8188

D.L. # 37382111 D.L. Class C State NC

DOB 07/15/1998 34 Vision Obstruction 0 35 Physical Condition 10 36 D.L. Restrictions 0

37 Alcohol/Drugs Suspected 7 38 Alcohol/Drugs Test 3 39 Results (if known) 5 40 Vehicle Seizure (DWI) ☐

Owner ACC CLEANING AND RESTORATION

Same as Driver? ☐

Address 1014 N GREENE ST

Same Address as Driver? ☐

City GREENVILLE State NC Zip 27834

Plate # EKH5793 Plate NC Plate 2019

VIN 1FBNE3BL2CDA61156

Vehicle FORD Vehicle 2012 41 Vehicle Style (Type) 5 42 Vehicle Drivable ☐ Yes

Make Year

43 TAD FD-6,UND-2 44 Estimated Damage \$12000

Insurance ERIE INSURANCE

Company

Policy # Q012030402

20 COMMERCIAL VEHICLE: Cargo, Carrier Name, Address, Source

Unit 45 Cargo Body Type ☐ Same Address as Owner?

Source:

☐ Truck☐ Shipping papers☐ Driver

Carrier Identification Numbers, GVWR, Axles

US DOT# _____ ICC# _____ Axles on Vehicle Including Trailers

State _____ State# _____ IFTA# _____

FE# _____ File# _____ Gross Vehicle Weight Rating

21 22 23 24 25 26 27 28 29 30 31 32 Names and Addresses for All Persons (Unit 1/Unit 2 Dvr, Ped, etc. - See Above); Use check blocks if address same as Driver

A	1	1	1	Unit 1-Drv, Ped, etc. see above	W	M	1	4	0	2	1	1	see above	Vehicle 1 Towed To: GVEGAS TOWING/GVEGAS TOWING
B	2	1	1	Unit 2-Drv, Ped, etc. see above	B	M	0	4	0	2	1	2	see above	Vehicle 2 Towed To: TONY'S TOWING/TONY'S TOWING
C														
D														
E														
F														
G														
H														

EXHIBIT

46 Name of EMS A-EMS #6

47 Injured Taken by EMS to VIDANT MEDICAL CENTER, (Treatment Facility and City or Town)

46 Name of EMS B-EMS #7

47 Injured Taken by EMS to VIDANT MEDICAL CENTER, (Treatment Facility and City or Town)

POINTS OF INITIAL CONTACT (Write in Codes)			VEHICLE INFO.		ROADWAY INFO.		WORK ZONE RELATED		
Unit 1	Unit 2	Unit 3	Unit 1	Unit 2	Unit 1	Unit 2	Unit 1	Unit 2	
Unit 1: 1 1 2 3 Unit 2: 2 1 21 20			60 Authorized Speed Limit	35	35	69 Road Feature	0	78 Workzone Area	5
CRASH SEQUENCE (Unit Level)			61 Estimate of Original Traveling Speed	49	50	70 Road Character	1	79 Work Activity	
62 Vehicle Maneuver/Action	4	4	62 Estimate of Speed at Impact	47	34	71 Road Classification	5	80 Work Area Marked	
63 Non-Motorist Action			63 Tire Impressions Before Impact (ft)	0	0	72 Road Surface Type	4	81 Crash Location	
64 Non-Motorist Location Prior to Impact			64 Distance Traveled After Impact (ft)	13	13	73 Road Configuration	2	TRAILER INFO. Unit 1 Unit 2	
65 Crash Sequence - First Event for This Unit	27	27	65 Emergency Vehicle Use			74 Access Control	1	82 Trailer Type	0 0
66 Crash Sequence - Second Event	5		66 Post-Crash Fire (if "Yes" check block)	<input type="checkbox"/>	<input type="checkbox"/>	75 Number of Lanes	2	1st Trailer No. Axles	
67 Crash Sequence - Third Event			67 School Bus - Contact Vehicle	<input type="checkbox"/>	<input type="checkbox"/>	76 Traffic Control Type	0	Width (inches)	
68 Crash Sequence - Fourth Event			68 School Bus - Noncontact Vehicle	<input type="checkbox"/>	<input type="checkbox"/>	77 Traffic Control Oper		Length (feet)	
69 Most Harmful Event for This Unit	27	27	COMMERCIAL VEHICLE: Hazardous Materials Involvement Unit Haz Mat Placard <input type="checkbox"/> Yes <input type="checkbox"/> No From Placard Indicate: Hazardous Cargo <input type="checkbox"/> Yes <input type="checkbox"/> No 4-digit placard number or 1-digit number from Released (does not include lost from fuel tank) name from diamond or box bottom of diamond Carrying Haz Mat <input type="checkbox"/> Yes <input type="checkbox"/> No				2nd Trailer No. Axles		
70 Distance/Direction to Object Struck	0	0					Width (inches)		
71 Vehicle Undercarriage/Overide	3	3					Length (feet)		
72 Vehicle Defects	0	0					83 Unit Overwidth Trailer and Overwidth Mobile Home		

84 DIAGRAM

Indicate North

CRASH DIAGRAM WILL BE ADDED AT A LATER DATE AFTER FURTHER INVESTIGATION

Unit 1 was: <input checked="" type="checkbox"/> Traveling <input type="checkbox"/> Parked Facing N S E W on E 5TH ST	Unit 2 was: <input checked="" type="checkbox"/> Traveling <input type="checkbox"/> Parked Facing N S E W on E 5TH ST
85 NARRATIVE (Include pertinent and unusual aspects, which are not listed elsewhere on the form) THIS SUPPLEMENT INDICATES CHANGES IN SOME OF THE CODING AND HOW THE CRASH OCCURRED. IT NOW REFLECTS V1 AS THE CONTRIBUTING CIRCUMSTANCE TO THE CRASH, AND NO CONTRIBUTING CIRCUMSTANCES FOR V2. IT NOW REFLECTS THE ORIGINAL TRAVELING SPEED FOR EACH VEHICLE AND IMPACT SPEED FOR EACH VEHICLE WHICH DIFFERS FROM THE ORIGINAL REPORT. THE SPEED WAS OBTAINED THROUGH THE EVENT DATA RECORDER READOUT ON EACH VEHICLE. THE SEATBELT STATUS FROM THE EDON V1 SHOWS IT BUCKLED AT TIME OF COLLISION.	
86 Type/Owner: _____ Owner Address: _____ Phone: _____ State: _____ Additional Property Damage: _____ Estimated Damage: \$ _____	
WITNESSES Name: _____ Address: _____ Phone No. (_____) _____ Name: _____ Address: _____ Phone No. (_____) _____	
TRAFFIC VIOLATION(S) Name: _____ Charge(s): _____ Name: _____ Charge(s): _____	
Officer Name: POT LUDWIG Officer Number: 462 Department: GREENVILLE POLICE DEPARTMENT	Date of Report: 05/08/2018

NORTH CAROLINA
PITT COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 1063

In Re: In the Matter of Custodial Law
Enforcement Agency Recording
Sought by: GERALD LEE OUTLAW,

Petitioner.


NOTICE OF HEARING

NOW COMES Petitioner, Gerald Lee Outlaw, by and through undersigned counsel and hereby gives notice to all parties that the attached Petition for Release of Custodial Law Enforcement Agency Recording will be held before the presiding Superior Court Judge at the Pitt County Superior Courthouse, on May 20, 2019 at 10:00 a.m.

This the 17th day of April, 2019.

WHITLEY LAW FIRM

By: _____



Ann C. Ochsner
State Bar No.: 43108
3301 Benson Drive, Suite 120
Raleigh, North Carolina 27609
Telephone: (919) 785-5000
Facsimile: (919) 785-3729
Email: aco@whitleylawfirm.com
Attorney for Plaintiff

CERTIFICATE OF SERVICE


I hereby certify that a copy of the **Notice of Hearing** was served upon the following parties and/or attorneys of record in this action by depositing a copy of the same in the United States mail, postage prepaid, addressed as follows to:

City of Greenville
c/o Ann E. Wall, City Manager
200 West Fifth Street
Greenville, NC 27834

Faris Dixon
District Attorney, Judicial District 3A
P.O. Box 8185
Greenville, NC 27835-8185

This the 17th day of April, 2019.

WHITLEY LAW FIRM

By: 
Ann C. Ochsner
State Bar No.: 43108
3301 Benson Drive, Suite 120
Raleigh, North Carolina 27609
Telephone: (919) 785-5000
Facsimile: (919) 785-3729
Email: aco@whitleylawfirm.com
Attorney for Plaintiff

STATE OF NORTH CAROLINA		File No 19 CVS <u>2655</u>
PITT County	FILED	
IN THE MATTER OF CUSTODIAL LAW ENFORCEMENT AGENCY RECORDING SOUGHT BY: 2019 SEP 16		In The General Court Of Justice Superior Court Division
Name Of Petitioner ALEXANDER MCCARTHY		PETITION FOR RELEASE OF CUSTODIAL LAW ENFORCEMENT AGENCY RECORDING
Address c/o Attorney Keith Williams, Personal Representative 321 South Evans Street Suite 103 Greenville, NC 27835		<input checked="" type="checkbox"/> G.S. 132-1.4A(l) - Person authorized to receive disclosure (No Filing Fee Applies) <input type="checkbox"/> G.S. 132-1.4A(g) - General (CVS Filing Fee Applies)
Phone No. 252-931-9362	Fax No. 252-830-5155	
Email Address keith@williamlawonline.com		
I, the above-named petitioner, request the release of a custodial law enforcement agency recording to <u>Attorney Keith Williams</u> , state that at least some portion of the law enforcement agency recording was made in this county, and I further state the following: Petitioner was charged as shown on the attached Exhibit A. I request a copy of any "recording" as defined by NCGS 132-1.4A(a)(6) showing the Petitioner or any portion of the alleged offense and/or the investigation of the alleged offense.		
This petition is specifically for pole camera recordings or the recordings of any other stationary camera showing the intersection of East Fifth Street and Reade Street in Greenville, North Carolina, on 9/5/2019 between 12:01 am and 2:00 am.		
This petition is filed by the undersigned as the personal representative for the petitioner (the petitioner's attorney of record, filed with petitioner's consent) under NCGS 132-1.4A(a)(5).		
(Include date and approximate time of activity captured in the recording, or otherwise identify the activity with particularity sufficient to identify the recording at issue.)		
CERTIFICATE OF SERVICE ON HEAD OF CUSTODIAL LAW ENFORCEMENT AGENCY		
I certify that a filed copy of this Petition was served on the head of the custodial law enforcement agency as follows: <input type="checkbox"/> Personal Delivery <input checked="" type="checkbox"/> By Regular Mail, US postage prepaid, addressed as follows: Chief of Police Greenville Police Department 500 South Greene Street Greenville, NC 27834 Courtesy copy to DKPhillips@greenvillenc.gov		
CERTIFICATE OF SERVICE ON DISTRICT ATTORNEY		
I certify that a filed copy of this Petition was served on the District Attorney as follows (only required for general release): <input type="checkbox"/> Personal Delivery <input type="checkbox"/> By Regular Mail, US postage prepaid, addressed as follows: Not seeking general release; District Attorney not served		
Date <u>9/16/2019</u>	Petitioner's Signature <u>s/ Keith Williams, counsel for Petitioner; filed with Petitioner's consent</u>	